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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/742,626	12/20/2000	Michael E. Oliver	50-00-007(014208.1372)	9360

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EXAMINER

BOYCE, ANDRE D

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 10/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/742,626

Applicant(s)

OLIVER, MICHAEL E.

Examiner

Andre Boyce

Art Unit

3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 December 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/20/00</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-25 have been examined.

Claim Objections

2. Claim 5 is objected to because of the following informalities: "is" should be --if-- in line 9. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 4, 5, 8-11, 13, 15, 16, 19-22, 24, and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 4, 13, 15, and 24 are rendered vague and indefinite. The claims include the limitation "and combinations thereof", which does not clearly define the scope (i.e., metes and bounds) of the claim.

Claims 5 and 16 recite the limitations "the total over time effort required", "the total over time effort available", and "the current reporting date". There is insufficient antecedent basis for this limitation in the claim.

Claims 8 and 19 recite the limitation "the cost performance index". There is insufficient antecedent basis for this limitation in the claim.

Claims 9 and 20 are rendered vague and indefinite for use of the term "reasonable". The term does not positively limit the claims.

Claims 10 and 21 recite the limitation "the cumulative budget cost of work scheduled". There is insufficient antecedent basis for this limitation in the claim.

Claims 11 and 22 recite the limitation "the number of full time equivalents scheduled". There is insufficient antecedent basis for this limitation in the claim.

Claim 25 is rendered vague and indefinite. The claim begins "The system of claim 14", however claim 14 is a method claim.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 14-25 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical

Art Unit: 3623

sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter.

For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts. In the present case independent claim 14 receives data from a software file, which is considered a nominal use of technology and not considered a functional portion of the invention. Therefore, the claims do not advance the technological arts.

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case the claimed invention determines and displays schedule recovery date information, thereby producing a useful, concrete, and tangible result, but not within the technological arts as explained above.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-8, 12-19, and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oliver (USPN 5,907,490), in view of Podrazhansky (US 2002/0052770).

As per claims 1-3, Oliver discloses a system monitoring and assessing the performance of a project, the system (project management system 110, figure 3) comprising: computer; software program associated with the computer, software program and computer (computer 120 and software program 52, figures 3-4) operable in combination to: receive project task data and earned value information from a project management software file (information delivered from software 56) or a historical data file (historical data file 60, figure 4). Oliver does not explicitly disclose determining schedule recovery date (SRD) information and display the schedule recovery date (SRD) information, SRD related information, and determining the SRD information by accessing a historical file. Podrazhansky discloses displaying the aggregate cost of the schedule for a defined time period, selectable by the user (§ 0054). Further, Podrazhansky discloses the aggregate cost based upon historical labor cost (§ 0054). Both Oliver and Podrazhansky are concerned with effective scheduling management, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include SRD information in Oliver, as seen in Podrazhansky, in order to efficiently determine current scheduling costs, thereby allowing management to make more effective decisions.

As per claim 4, Oliver discloses displaying advisory messages selected from the group consisting of proposed courses of action, explanatory information, and combinations thereof (i.e., initial screen may also serve as a process request for additional information, column 8, lines 39-44).

As per claims 5 and 6, Oliver does not disclose obtaining the SRD information by: calculating the total over time effort hours required; calculating the total over time effort hours available for successive reporting period following current reporting date (CRD); and setting the schedule recovery date equal to the reporting period the total over time effort hours available equal to or greater than the total over time effort hours required; wherein at least the last two steps are repeated for each successive reporting period until a schedule recovery date, which the total over time effort hours available equal to greater than the total over time effort hours required, is determined or until a project baseline finish date is reached. Podrazhansky discloses deriving a staffing requirement that optimally satisfies the forecasted workload volume, wherein the user may construct various scenarios including overtime requirements (§ 0032). Further, Podrazhansky discloses the cost calculation option 64 that enables the user to formulate the cost of overtime by selecting overtime thresholds (i.e., shift premiums that determine overtime required, § 0053), and displaying the aggregate cost of the schedule for a defined time period, selectable by the user (i.e., the user may alter the time period in order to repeat the process § 0054). Both Oliver and Podrazhansky are concerned with effective scheduling management, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include setting the SRD based upon the calculation of the overtime available and overtime required in Oliver, as seen in Podrazhansky, thereby efficiently determining overtime costs and current scheduling costs, allowing management to make more effective decisions.

As per claim 7, Oliver does not disclose total over time effort hours required calculated by setting it equal to the absolute value of the schedule variance. Podrazhansky discloses the cost calculation option 64 that enables the user to formulate the cost of overtime by selecting overtime thresholds, including shift premiums that extend beyond normal working hours (i.e., schedule variance, ¶ 0053). Both Oliver and Podrazhansky are concerned with effective scheduling management, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include setting the overtime effort equal to the schedule variance in Oliver, as seen in Podrazhansky, thereby efficiently determining overtime costs and current scheduling costs, allowing management to make more effective decisions.

As per claim 8, Oliver does not explicitly disclose total over time effort hours required is calculated by dividing the absolute value the schedule variance by the cost performance index (CPI). However, Oliver discloses the CPI equaling $EV/actual$ and the schedule variance equaling $EV-baseline$ (table 2). Further, Podrazhansky discloses formulating the cost of overtime by selecting overtime thresholds, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include calculating the overtime effort in Oliver, as seen in Podrazhansky, thereby efficiently determining overtime costs and current scheduling costs, allowing management to make more effective decisions.

As per claim 12, Oliver discloses the reporting period is selected from the group consisting of day, week (e.g., reporting period of weeks, column 8, lines 13-15), a month, a quarter, a year, and a decade.

As per claim 13, Oliver does not disclose storing a data information selected from group consisting of the schedule recovery date, the total over time effort hours available for each reporting period, the corresponding reporting period being analyzed, and combinations thereof. Podrazhansky discloses the cost calculation option 64 that enables the user to formulate the cost of overtime by selecting overtime thresholds (i.e., shift premiums that determine overtime required, ¶ 0053), and displaying the aggregate cost of the schedule for a defined time period, selectable by the user (i.e., the user may alter the time period in order to repeat the process ¶ 0054). Both Oliver and Podrazhansky are concerned with effective scheduling management, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include setting the SRD based upon the calculation of the overtime available and overtime required in Oliver, as seen in Podrazhansky, thereby efficiently determining overtime costs and current scheduling costs, allowing management to make more effective decisions.

Claims 14-19, 23, and 24 are rejected based upon the rejection of claims 1 and 4-8, 12, and 13, respectively, since they are the method claims corresponding to the system claims.

As per claim 25, Oliver discloses determining and displaying the schedule variance recovered at certain pre-selected reporting periods and the corresponding periods (column 8, lines 36-39).

9. Claims 9-11 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oliver (USPN 5,907,490), in view of Podrazhansky (US 2002/0052770), in further view of Sanders et al (USPN 6,574,605).

As per claims 9 and 11, Oliver does not disclose the total over time effort hours available is calculated by multiplying a total number of available full time equivalents from the current reporting date the reporting period being analyzed by reasonable over time rate per day for each available full time equivalent and the total number of available full time equivalents is calculated by adding the number of full time equivalents scheduled for each reporting period from the current reporting date the reporting period being analyzed. Sanders et al disclose determining the number of FTE's required to achieve a predefined level of customer service and applying overtime rules to satisfy the requirements, which would include rates (column 6, lines 26-28 and 36-39). Further, Sanders et al disclose forecasting how many FTE's are needed for a particular amount of time for a specific project, thereby determining amount of overtime for the period (column 6, lines 53-59). Oliver, Podrazhansky, and Sanders et al are all concerned with effective schedule management, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include calculating the overtime effort based upon FTE's in

Oliver, as seen in Sanders et al, as an effective means of determining overtime requirements, based upon a predefined level of work scheduled, thereby making the Oliver system more robust.

As per claim 10, Oliver does not disclose the total number available full time equivalents calculated by obtaining the difference between the cumulative budget cost work scheduled (BCWS) for the reporting period being analyzed and the cumulative (BCWS) for the current reporting date, and dividing the difference by the hours per day available from each time equivalent. However, Oliver discloses calculating a BCWS for a reporting period (column 8, lines 12-16). In addition, Sanders et al disclose forecasting how many FTE's are needed for a particular amount of time for a specific project, thereby determining amount of overtime for the period (column 6, lines 53-59). Oliver, Podrazhansky, and Sanders et al are all concerned with effective schedule management, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include calculating the overtime effort based upon the BCWS divided by the hours available from each time equivalent in Oliver, as seen in Sanders et al, as an effective means of determining overtime requirements, based upon a predefined level of work scheduled, thereby making the Oliver system more robust.

Claims 20-22 are rejected based upon the rejection of claims 9-11, respectively, since they are the method claims corresponding to the system claims.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

-Ross et al (USPN 6370509) disclose displaying a production schedule.

-Thompson (US 2002/0120486) discloses analyzing a workload schedule for a complex process.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre Boyce whose telephone number is (703) 305-1867. The examiner can normally be reached on 9:30-6pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (703) 305-9643. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3623

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

adb



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